

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CHEHALEM PHYSICAL THERAPY,
INC.,

Plaintiff,

09-CV-320-HU

ORDER

v.

COVENTRY HEALTH CARE, INC.,

Defendant.

BROWN, Judge.

Magistrate Judge Dennis James Hubel issued Findings and Recommendation (#53) on September 30, 2009, in which he recommended the Court deny Defendant's Motion for Summary Judgment (#15) and grant in part and deny in part Defendant's Motion to Dismiss (#19). Defendant filed timely Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil

Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(*en banc*); *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988).

In its Objections, Defendant reiterates the arguments contained in its Motion for Summary Judgment and Motion to Dismiss and stated at oral argument. This Court has carefully considered Defendant's Objections and concludes they do not provide a basis to modify the Findings and Recommendation.

As to Defendant's contention that the Magistrate Judge misquoted the terms of the agreement at issue, the Court finds Defendant's contention is without merit. The Magistrate Judge found the phrase "maximum amount payable" refers only to the amount listed in the fee schedule and then found the agreement at issue expressly distinguishes between the amount charged by a provider and the amount listed in the fee schedule, which is the maximum amount payable under the fee schedule. Thus, the Magistrate Judge did not misquote the terms of the agreement.

Finally, the Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Hubel's Findings and Recommendation (#53), **DENIES** Defendant's Motion for Summary Judgment (#15), and **GRANTS** Defendant's Motion to Dismiss (#19) to the extent that the Court **DISMISSES** Plaintiff's class allegations pertaining to the "Injunctive Class," and **DENIES** Defendant's Motion to Dismiss (#19) as to the "Damages Class," but with leave to renew that challenge after discovery and on a schedule to be proposed to the Court.

IT IS SO ORDERED.

DATED this 15th day of December, 2009.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge